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Date:
September 30, 2016

Association =
Study =

Community Hospital =
State =
State University =
University Hospital =
Village =
X =
Y =
Z =

Dear :

This letter responds to a letter dated February 17, 2016, and subsequent correspondence, requesting rulings that (i) the lease agreement described below is in furtherance of Association's charitable purpose under § 501(c)(3) of the Internal Revenue Code¹; and (ii) the lessee's use of the leased property is substantially related to the exercise or performance by Association of its charitable purpose for purposes of determining whether income under the lease is derived from debt-financed property under § 514(b)(1).

FACTS

¹ The Internal Revenue Code of 1986, as amended, to which all subsequent "section" references are made unless otherwise indicated.

Association is recognized by the Internal Revenue Service as an organization described in §§ 170(b)(1)(A)(iii) and 501(c)(3), and is classified as a public charity under § 509(a)(1). Association was organized under State law as a nonprofit membership and charitable corporation and was formed to “establish and maintain a general hospital” at Village (“Community Hospital”), and “to receive, collect, and hold, either by gift, bequest, devise, or otherwise, funds and property either real or personal, and to use and disburse the same in furtherance of the objects of the said corporation.” Association’s board of directors is composed of X individuals whose background and experience reflect a wide diversity of professions and interests within the community. Community Hospital has an open medical staff, and its emergency department treats all persons, regardless of one’s ability to pay. Association owns the Community Hospital building and various other buildings in Village (the “Premises”). Community Hospital is collateral for tax-exempt bonds used to fund its expansion and modernization.

Association has operated Community Hospital continuously for more than Z years. For much of that time, Community Hospital’s revenues exceeded its expenses. In recent decades, however, changes in the healthcare industry, including changes in the standard of payment for hospital services, have caused Community Hospital to sustain steady, and occasionally severe, losses.

Some years ago, State undertook an independent review of State’s health care capacity and resources. To that end, it commissioned a study (the “Study”), which examined the supply of general hospital and nursing home facilities in State, and recommended changes that would result in a more coherent, streamlined health care system. Referring to Community Hospital and certain other independent community hospitals in the same geographic region, the Study recommended that access to emergency and acute inpatient care be maintained at each location due to the unique geography and population distribution of the region and the distance between the region’s hospitals. The Study recognized, however, that competition for patients in what it characterized as a “thinly populated” area would cause the continued decline of those hospitals. Consequently, it recommended that the hospitals develop an affiliation with University Hospital in order to strengthen the hospitals and to create a healthcare system that better serves the needs of the region.

University Hospital is an academic medical center and the region’s only tertiary care center and Level 1 trauma center. University Hospital is a division of State University.

State University was created by statute as a corporation within the department of the State that is concerned with public education.²

After careful study and analysis of current and projected future conditions in its service area and in the field of health care in general, Association concluded that its public purpose could best be achieved by integrating its Community Hospital operations into University Hospital under an Integration and Affiliation Agreement (the “IAA”) with State University (acting through University Hospital) and by entering into other related and ancillary transactions and arrangements, including a lease agreement (the “Lease”).³

Under the terms of the Lease, Association will lease the Premises and all property, plant, and fixed equipment located on the Premises to State University (acting through University Hospital) for a term of Y years (which term is automatically extended for an additional year on each anniversary of the lease commencement date), unless terminated sooner due to one of several enumerated events, including termination by the landlord following a major tenant breach, not timely cured. A major tenant breach includes tenant’s failure to observe or perform any material covenant, condition, or agreement on its part to be observed or performed under certain sections of the IAA. Among the covenants and agreements that State University is required to observe or perform to avoid a major tenant breach are the following:

- Maintain Community Hospital at service and quality levels commensurate with a first-class community hospital of similar type in State;
- Maintain at Community Hospital the following list of core medical and surgical services, at levels of access and sophistication customary for a first-class community hospital of similar type in State:
 - Emergency services;
 - Maternity ward and ob/gyn services;
 - Pediatric services;
 - General medicine and surgery beds;
 - Operating room suites;
 - Dialysis services;

² While State University is not recognized as an organization described in § 501(c)(3), you represent that it is an integral part of State, such that its income is generally not subject to federal income tax.

³ The signatories to the IAA and the Lease are State University and Association. However, University Hospital, which is a division of State University, will operate Community Hospital though the Premises will still be owned by Association.

- All services that are offered by at least 75% of community hospitals in the State that have at least 100 licensed beds and have similar medical needs in their primary service area; and
 - Appropriate supportive services (e.g., anesthesiology, radiology, and pathology);
- Maintain at Community Hospital accreditation by the Joint Commission without significant deficiencies, as well as the current “Centers of Excellence” designations bestowed on Community Hospital by nationally recognized accreditation bodies;
- Ensure that Community Hospital is operated in a manner consistent with the mission, vision, values, and tax-exempt status of State University⁴; in particular, the provision of an emergency room meeting State Department of Health requirements may not be discontinued or unreasonably limited; and
- Ensure that State University maintains its exemption from U.S. federal income taxation.⁵

The rent to be paid under the Lease is limited to Association’s payment obligations under the tax-exempt bonds and certain other liabilities, utilities, taxes, insurance, and administrative expenses.

Under the IAA, the parties agree to plan for, and construct, a new facility (“New Community Hospital”) that will be owned by Association but operated by State University and located on State University-owned land in Village that is leased to Association for a nominal rent. The terms of the Lease provide that, prior to the construction of the New Community Hospital, the parties agree to negotiate and execute a lease that will govern State University’s occupancy and use of the New Community Hospital premises, the provisions of which will be substantially similar to the provisions of the Lease.

As an integral part of State, State University is governed by a board of trustees, the majority of the members of which are appointed by State’s governor. The remaining members of the board of trustees are State University leaders who serve ex-officio. While the persons who control State University are not the same as the persons who control Association, the IAA provides for a joint advisory committee made up of Association and State University designees, the majority of whom are appointed by Association (the “Joint Advisory Committee”). The Joint Advisory Committee will meet

⁴ See fn. 2.

⁵ See fn. 2.

at least quarterly to advise University Hospital on matters of operational and strategic importance involving Community Hospital. It will serve a consultative role (and will be subject and subordinate to State University's ultimate responsibility and decision-making authority), but will discuss and may advise University Hospital on any matter that its participants deem important relating to Community Hospital, including the recruitment, selection, or termination of the senior executive having operational responsibility for Community Hospital, decisions to reduce, close, or transfer any core service, proposed annual capital and operating budgets of Community Hospital, and the development of long-term strategic plans for Community Hospital.

RULINGS REQUESTED

Association has requested the following rulings:

- 1) The Lease will be in furtherance of Association's exempt purpose under § 501(c)(3); and
- 2) The use of the Premises by University Hospital under the Lease is substantially related to the exercise or performance of Association's exempt purpose or function for purposes of the exception to the term "debt-financed property" under § 514(b)(1)(A), such that any gross income realized from the Lease will not be unrelated debt-financed income as defined in § 514(a).

LAW

Section 501(a) provides generally that an organization described in § 501(c) is exempt from federal income taxes.

Section 501(c)(3) describes entities that are organized and operated exclusively for charitable, educational, scientific, and certain other purposes.

Section 1.501(c)(3)-1(c) of the Income Tax Regulations (the "regulations") provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Rev. Rul. 69-545, 1969-2 C.B. 117, states that the promotion of health is a charitable purpose, and that a nonprofit organization whose purpose and activity are providing hospital care is promoting health and may, therefore, qualify as organized and operated in furtherance of charitable purposes if it meets the other requirements of § 501(c)(3). The ruling explains that the promotion of health is one of the purposes in the general law of charity that is deemed beneficial to the community as a whole even though the class of beneficiaries eligible to receive a direct benefit from its activities does not include all members of the community, such as indigent members of the community, provided that the class is not so small that its relief is not of benefit to the community. For example, a hospital that operates an emergency room open to all persons and that provides hospital care for all those persons in the community able to pay the cost of such care either directly or through third party reimbursement is promoting the health of a class of persons that is broad enough to benefit the community. Additional indications that a hospital is operated for the benefit of the public include the facts that control of the hospital rests with a board of trustees composed of independent civic leaders, that the hospital maintains an open medical staff, with privileges available to all qualified physicians, and that members of its active medical staff have the privilege of leasing available space in its medical building.

Rev. Rul. 73-313, 1973-2 C.B. 174, addresses the issue of whether the activity of providing a medical building and facilities at reasonable rent (but less than what would be necessary to provide a normal return on the investment in the building and other facilities) to attract a medical doctor to a community furthers the charitable purposes of an organization that was formed to promote the health of the community through the development and improvement of medical facilities and services. The community represented by the organization is in an isolated rural area where there were no medical practitioners. To induce a doctor to locate to the community, the organization erected a building for use as a doctor's office with funds raised by contributions. Using the availability of the building at a reasonable rental basis as an inducement, the organization entered into an arrangement with a doctor to locate in the community, with the understanding that the doctor would make his services available to the entire community. In holding that the organization's activity is charitable within the meaning of § 501(c)(3), the ruling states that providing a physical facility in the manner described bears a clear relationship to lessening the health hazards that result from the absence of a local practitioner, and that the terms of the arrangement, which were negotiated at arm's length and in good faith, bear a reasonable relationship to the promotion and protection of the health of the community. Any personal benefit derived by the doctor from the use of the building to conduct his private practice does not lessen the public

benefit flowing from the organization's activities or constitute the type of private interest prohibited by the regulations.

Rev. Rul. 80-309, 1980-2 C.B. 183, addresses the issue of whether a nonprofit organization that was created to construct, maintain, and operate or lease a public hospital is operated exclusively for charitable purposes. The organization's articles of incorporation state that the organization's purpose is to provide a public hospital and related facilities for city V and its surrounding communities. The articles also provide that all of the organization's assets will be transferred, without consideration, to city V when all indebtedness has been paid. City V has agreed to accept title at such time. After construction of the hospital and related facilities, the organization's only activity has been to lease them to an association exempt under § 501(c)(3). The lessee operates the hospital and facilities and pays as consideration an amount sufficient only to retire the organization's indebtedness incurred to finance them and meet the organization's administrative expenses. Trustees of the lessee association make up the lessor organization's entire board of directors. Citing *Restatement (Second), Trusts*, secs. 368, 372, and *IV Scott on Trusts* (3d ed. 1967) secs. 368, 372, for the proposition that the promotion of health is considered a charitable purpose under the general law of charity, the ruling concludes that the organization, by building a public hospital and related facilities and leasing them to an exempt charitable association, which operates the facilities for an amount sufficient only to retire indebtedness and meet necessary operating expenses, is furthering the charitable purpose of promoting the health of the community.

In B.S.W. Group, Inc., v. Comm'r, 70 T.C. 352 (1978), an organization formed for the purpose of providing consulting services to tax-exempt and not-for-profit organizations in the area of rural-related policy and program development, sought a declaratory judgment from the Tax Court after the IRS determined that the organization did not qualify as an organization described in § 501(c)(3). Holding that the Commissioner had not erred in its determination, the Tax Court said that it is the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, that is ultimately dispositive of the organization's right to be classified as a § 501(c)(3) organization. With respect to this petitioner, the court said that the critical enquiry is whether petitioner's primary purpose for engaging in its sole activity, providing consulting services, is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits. Finding that petitioner's sole activity constituted a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit, and observing that competition with commercial firms is strong evidence of the predominance of a nonexempt

commercial purpose, the Tax Court concluded that petitioner's conduct of a business with an apparently commercial character weighed heavily against exemption. Furthermore, after noting that it did not appear that petitioner ever planned to charge a fee less than cost, the court said the fact that petitioner's fees may be lower than those charged by other firms is not enough to prove that petitioner's purposes are primarily exempt.

Section 511(a) imposes a tax on the unrelated business taxable income of organizations described in § 501(c)(3).

Section 512(a)(1) defines the term "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less the allowable deductions which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in § 512(b).

Section 512(b)(3)(A) excludes from the term "unrelated business taxable income" all rents from real property, and all rents from personal property leased with such real property if the rents attributable to such personal property are an incidental amount of the total rents received and accrued under the lease, determined at the time the personal property is placed in service.

Section 512(b)(4) provides that, notwithstanding paragraph (3), above, in the case of debt-financed property (as defined in § 514) there generally shall be included, as an item of gross income derived from an unrelated trade or business, the amount ascertained under § 514(a)(1), and there shall be allowed, as a deduction, the amount ascertained under § 514(a)(2).

Section 513(a) defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under § 501.

Section 1.513-1(d)(1) of the regulations provides that gross income derives from "unrelated trade or business" within the meaning of § 513(a) if the conduct of the trade or business which produces the income is not substantially related (other than through the production of funds) to the purposes for which exemption is granted. The presence of this requirement necessitates an examination of the relationship between the business activities which generate the particular income in question – the activities, that

is, of producing or distributing the goods or performing the services involved – and the accomplishment of the organization’s exempt purposes.

Section 1.513-1(d)(2) of the regulations provides that trade or business is “related” to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income); and it is “substantially related,” for purposes of § 513, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

In computing under § 512 the unrelated business taxable income for any taxable year, § 514(a) generally includes as an item of gross income derived from an unrelated trade or business certain amounts with respect to debt-financed property.

Section 514(b)(1) defines the term “debt-financed property” as any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year, except that such term does not include—

(A)(i) any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under § 501 ... or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related.

Section 1.514(b)-1(a) of the regulations defines the term “debt-financed property” as any property which is held to produce income (e.g., rental real estate) and with respect to which there is any acquisition indebtedness at any time during the taxable year.

Section 1.514(b)-1(b)(1)(i) of the regulations provides that to the extent that the use of any property is substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting its

basis for exemption under § 501, such property shall not be treated as “debt-financed property.”

Section 1.514(b)-1(b)(1)(ii) of the regulations provides that if substantially all of any property is used in a manner described in § 1.514(b)-1(b)(1)(i), such property shall not be treated as “debt-financed property.” In general, the preceding sentence shall apply if 85 percent or more of the use of such property is devoted to the organization’s exempt purpose. The extent to which property is used for a particular purpose shall be determined on the basis of all the facts and circumstances.

Section 514(c)(1) defines the term “acquisition indebtedness” with respect to any debt-financed property to include the unpaid amount of the indebtedness incurred by the organization in acquiring or improving such property.

ANALYSIS

Whether leasing the Premises to State University furthers Association’s exempt purposes.

The leasing of real property is a trade or business commonly carried on for profit by commercial ventures. In B.S.W. Group, Inc. v. Comm’r, the Tax Court held that the conduct of a trade or business of a commercial character generally does not further charitable purposes, even if the trade or business provides goods or services at cost and solely to § 501(c)(3) organizations. Nevertheless, the court said that it is the purpose towards which the activities are directed, and not the nature of the activities themselves, that determines whether the activities further exempt purposes.

Revenue Ruling 80-309 provides an example of an instance in which a unique set of facts supported a conclusion that, in rare circumstances, the activity of leasing a hospital facility to an association that is exempt under § 501(c)(3) is directed to the furtherance of charitable purposes. That revenue ruling held that a nonprofit organization was operating exclusively for charitable purposes when it leased a hospital facility to a § 501(c)(3) association under the following facts: (i) the lessee association paid as consideration an amount sufficient only to retire the indebtedness incurred to finance the hospital facility and meet necessary operating expenses; (ii) lessor and lessee were under common control; and (iii) title to the facility would be transferred to the municipality once all indebtedness had been paid.

Association was organized for the purpose of maintaining a general hospital in Village so as to ensure the highest quality of healthcare services for its community. Acting on the recommendation of the State-commissioned Study that it develop an affiliation with

University Hospital to strengthen Community Hospital and to create a healthcare system that better serves the needs of the region, Association proposes to lease the Premises to State University, which is an integral part of State that is organized and operated for educational purposes. The lease of the Premises to State University (acting through University Hospital) will not cause Community Hospital to be operated other than in a manner that will continue to benefit the public and serve the public interest. In entering into the Lease, State University covenants to maintain the core services already rendered by Community Hospital, including emergency room services open to the entire community. In addition, State University covenants to maintain Community Hospital as a first-class community hospital, to maintain Community Hospital's accreditation by the Joint Commission and its current "Centers of Excellence" designations, to operate Community Hospital in a manner consistent with State University's mission, vision, values, and tax-exempt status, and to maintain State University's exemption from U.S. federal income taxation.⁶ If State University breaches its covenants, Association can terminate the Lease. The rent under the Lease will be in an amount sufficient only to satisfy Association's obligations under instruments pertaining to tax-exempt bonds, the proceeds of which were used to expand and modernize Community Hospital, and to pay other liabilities and expenses incurred, or to be incurred, by Association on behalf of Community Hospital and New Community Hospital. Once the obligations under the bonds are satisfied, the rental amount will decrease accordingly. Finally, although the persons who control State University are not the same persons who control Association, Association controls the Joint Advisory Committee that will advise University Hospital on the operation of, and strategic planning for, Community Hospital.

Consequently, as in Revenue Ruling 80-309, in which an unusual set of facts resulted in a conclusion that the lease of a hospital facility to a § 501(c)(3) organization was in furtherance of charitable purposes, the particular facts of this case – specifically, the Study's recommendation that Community Hospital affiliate with University Hospital in order to gain access to tertiary care services and the other benefits inherent in a relationship with an academic medical center, Association's determination that affiliation with State University would be the best way to maintain and enhance health care and hospital services for the residents of the community, State University's status as an integral part of State organized and operated for educational purposes, State University's commitments under the IAA, and Association's control of the Joint Advisory Committee – lead to a conclusion that the lease of the Premises to State University, acting through University Hospital, furthers Association's charitable purpose of

⁶ See fn. 2.

promoting health by maintaining a general hospital at Village. Thus, under the particular facts of this case, the proposed lease structure will be used to accomplish the same purposes previously carried out directly by Association.

Revenue Ruling 73-313 provides another example of an instance in which a unique fact – the absence of medical providers in an isolated rural community – resulted in the conclusion that the activity of leasing property – in this case, the lease of a medical office under terms that would induce a private physician to set up a practice in the community and make his services available to the entire community – is directed to the furtherance of a charitable purpose, namely the purpose of promoting the health of the residents of the community by lessening the health hazards resulting from the absence of a local medical practitioner.

Similarly, the Study noted that Community Hospital serves a thinly populated area in which access to emergency and acute inpatient care must be maintained. The IAA and accompanying Lease will enable Community Hospital to share resources with University Hospital, a tertiary academic medical center, which will give members of the community access to a broader and more efficient network of emergency services, healthcare providers, medical specialists, specialty medical care, and clinical trials. The affiliation will also guarantee the long-term financial stability of Community Hospital. Therefore, by leasing the Premises to State University, Association will be furthering a charitable purpose, namely the purpose of promoting the health of the residents of an isolated, thinly populated area by lessening the health hazards that would result should, in the absence of the affiliation, Community Hospital be forced to discontinue core services or to close entirely.

In Revenue Ruling 73-313, furthermore, the leasing of property to a medical provider for reasonable rent under terms that were negotiated at arm's length and in good faith did not cause an arrangement that otherwise served a public interest to be construed as serving an impermissible private interest. Similarly, the leasing of the Premises to State University will not cause the affiliation between Association and State University – which, as discussed above, otherwise serves a public interest – to serve impermissible private interests. As previously noted, the lessee, State University, is an integral part of State with the mission of providing educational services to the people of State. As such, it owes a singular duty to, and is charged with unique responsibilities toward, the residents of State. Therefore, the lease of the Premises to State University, as provided under the IAA and the Lease, will not redound to private interests, but will continue to accrue to the benefit of the people of State and the residents of Village and the surrounding region.

Whether the use of the Premises by University Hospital under the Lease is substantially related to the exercise or performance by Association of its exempt purpose.

The Premises are the subject of tax-exempt bond financing, the proceeds of which were used to expand and modernize those Premises. Therefore, Community Hospital would be considered debt-financed property under § 514(a), and a percentage of any payments derived under the Lease that would otherwise be excluded as rents under § 512(b)(3)(A) would be includible in Association's unrelated debt-financed income unless University Hospital's use of the Premises under the Lease is substantially related to the exercise or performance by Association of its charitable purpose.

Association's charitable purpose is to establish and maintain a general hospital at Village. Under the terms of the IAA and the accompanying Lease, State University (acting through University Hospital) is required to use the Premises to maintain Community Hospital and to continue providing healthcare services to the public served by Association. Consequently, the use of the Premises by State University (acting through University Hospital) is substantially related to the exercise or performance by Association of its charitable purpose, and the Premises are not considered debt-financed property within the meaning of § 514(b)(1) for purposes of determining whether any part of the income derived under the Lease is excludible from Association's unrelated business taxable income under § 512(b)(3).

RULINGS

Based solely on the facts and representations submitted by Association, we rule as follows:

- 1) The leasing of the Premises to State University as provided in the Lease will further Association's charitable purpose under § 501(c)(3); and
- 2) The use of the Premises by State University (acting through University Hospital) will be substantially related to the exercise or performance by Association of its charitable purpose. Therefore, the Premises will not be considered debt-financed property within the meaning of § 514(b)(1) for purposes of determining whether any part of the income derived under the Lease will be excludible from Association's unrelated business taxable income under § 512(b)(3).

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Association (accompanied by a penalty of perjury statement executed by an individual with authority to bind Association) and upon the

understanding that there will be no material changes in the facts. This office has not verified any of the material submitted in support of the request for rulings, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2016-1, § 11.05.

No ruling is granted as to whether Association qualifies as an organization described in § 501(c) and/or § 509(a)(1), (2), or (3), and, except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling. In addition, no ruling is granted regarding whether Association satisfies or is required to satisfy the requirements of § 501(r). This ruling applies only to the Lease and does not extend to any future lease with respect to New Community Hospital.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

David L. Marshall
Assistant Branch Chief
Exempt Organizations Branch 1
(TEGE Associate Chief Counsel)